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FEDERAL COMMUNICATIONS COMMISSION
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OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: CC Docket No. 96-262

Dear Mr. Caton:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS Telecom), are an original and 16 copies of its reply comments in response to comments filed pursuant to the Commission's December 24, 1996 Notice of Proposed Rulemaking on Access Charge Reform, in the above-referenced proceeding.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

Margot Smiley Humphrey

Margot Smiley Humphrey

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

REPLY COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

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February 14, 1997

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REPLY COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corporation (TDS Telecom), by its attorneys, submits these reply comments in response to the comments filed in the above-captioned proceeding on January 29, 1997.[1] TDS Telecom is participating on behalf of its 105 local exchange carriers (LECs), which serve as the incumbent local exchange and access provider and carrier of last resort in local service areas located in 28 states. The driving concerns at this stage of this proceeding for the TDS Telecom LECs and similarly-situated incumbent LECs (ILECs) are (a) the need for carefully tailored access charge reforms that take into account the substantial differences between

[1]Comments in the opening round of this proceeding are cited by an abbreviation, acronym or short form of the party's name and the relevant page number(s).

rate of return regulated ILECs and the price cap LECs which are the principal focus of this proceeding and (b) the need for immediate options and regulatory flexibility to permit rational and efficient responses to competition, while preserving and advancing universal service and rural network advances.

I. INTRODUCTION AND SUMMARY

The Commission has undertaken a comprehensive review of its access charge rules, which govern the terms under which interexchange carriers have, since 1984, obtained the connectivity necessary to pick up and deliver calls placed over their interstate long distance telecommunications networks. It is generally agreed that modifications are necessary in the access charge framework to accommodate the sweeping national policy changes enacted by the Telecommunications Act of 1996.[2] Access charge modification is one constituent in the trilogy-plus-one of issues and proceedings essential to integrated, harmonious implementation of the pro-competitive, deregulatory and universally available network and service advances envisioned by Congress. These four key proceedings are: universal service, interconnection, access charge reform and separations review.

The comments confirm that the Commission cannot realistically ignore the impact of its price cap LEC access charge reform proposals on rate of return LECs. Nor can it fairly neglect their immediate need for enough regulatory room to respond to competitive pressures, their significantly different and diverse market facts and the existing access scheme's market distortions. It should provide these rural LECs reform options now, but must avoid large LEC

[2]Pub. L. 104-104, 110 stat. 56 (1996 Act), to be codified at 47 U.S.C. §§ 151 et seq.

reforms that will be harmful or unlawful for rate of return LECs by carefully evaluating the impact of the "trilogy" issues (plus separations reform) on all ILECs and their customers.

Prescription or indirect coercion for ILECs to use forward-looking, hypothetical proxy cost models for access pricing cannot lawfully or efficiently precede validation for all LECs and for the expanded purposes proxies are now expected to serve. Professor Kahn has explained that the hypothetical network cost proxies under discussion here do not successfully simulate the results of real competition (i.e., without regulatory inference). MCI and AT&T -- the chief proponents of imaginary network cost proxies -- should be required to demonstrate that the regulatory cost scheme they want imposed on ILECs has driven their own "competitive" market rates to the "efficient" level that the Hatfield study they support would predict. The costs that would be defined out of existence by proxies or by eliminating the TIC are real and protected from regulatory write-off by the Act, the Constitution and fundamental fairness. Rate of return LECs and other ILECs must be enabled to recover their actual historical costs without after-the-fact "prudence" review or speculation about "other" revenue sources.

Unlike price cap carriers, rate of return LECs have been subject to the Commission's detailed access charge rules, annual review of their NECA tariffs and state oversight, and their costs have been scrutinized by NECA. It is irrational to assume that their rates are excessive or to set off any "new" universal service revenues to prevent "double recovery" until the Commission can match up explicit funding to the implicit support it replaces, with knowledge of how all of the revamped universal service, access, interconnection and jurisdictional separations rules together will affect costs, obligations and revenues.

The Commission should reject demands from would-be competitors and access customers that cannot accept genuine marketplace forces to impose requirements Congress enacted only for large urban carriers on rate of return LECs. As Dr. Kahn has shown, more regulation to control carrier arrangements and ILEC prices will betray the Act's marketplace and deregulation purposes and impede transition to genuine competition.

WUTC, AARP and others correctly challenge proposals to relieve interexchange carriers of responsibility for a fair share of common line costs. Nor can the Commission lawfully raise, deaverage or arbitrarily reconfigure SLC burdens by uncapping the SLC for additional residential or multi-line business connections. It would also be unlawful and politically unacceptable to substitute any charge equivalent to another or higher SLC on local exchange customers, especially if the ILEC must collect the charge. Unlike proposals for a lawful, uniform nationwide "explicit" surcharge on end user bills to recover competitively neutral carrier contributions for universal service, deaveraged end user charges would simply force subscribers to shoulder higher charges to relieve interexchange carriers of a legitimate, competitively neutral cost of doing business. The Commission should establish non-usage-based flat-rated or bulk-billed charges to interexchange carriers for the recovery of Carrier Common Line costs. Moreover, all interexchange and LEC end user charges must meet the Act's interexchange averaging and reasonable rural-urban service and price parity mandates because Congress did not enact the new law to raise end user rates.

All common line and traffic sensitive "reforms" adopted for price cap carriers should be optional for rate of return (including NECA pool) LECs while the Commission examines their needs separately. These small ILECs can best weigh the costs and benefits of such proposals in light of market facts confronting their individual companies and rate of return LECs in general.

II. THE COMMISSION CANNOT REWRITE THE ACT BY IGNORING RATE OF RETURN LECs' FLEXIBILITY NEEDS AND CLOSELY RELATED PROCEEDINGS OR BY SELECTIVELY APPLYING INAPPLICABLE REQUIREMENTS OF THE 1996 ACT FOR UNINTENDED PURPOSES

A. The Basic Decisions at Issue Here Are Virtually Certain to Be Applied to Rate of Return, As Well As Price Cap LECs

The comments reflect a widespread concern on the part of rate of return LECs (e.g., RTC at 1-4, Western Alliance at 1-2) that they will be subjected to undesirable "reforms " adopted for price cap LECs and excluded or delayed from using the flexibility necessary to operate in the post-Act competitive marketplace. Their concern is not misplaced. ACTA (p. 3) urges application of the structural access charge changes it supports, such as significantly modified CCL and SLC structure and pricing, without delay, since it is "apparent" that the changes will "eventually apply to all LECs." Centennial Cellular (pp. 2-3) wants the Commission to apply all "revised access charge rules to all incumbent LECs" unless small rural LECs can prove the need for an exceptional waiver. Proponents of all-ILEC reforms do not discuss the implications for rural customers of proposals that would reduce interstate revenues and raise rural access and end user charges.

WUTC (p.3) more prudently adjures the Commission to consider access reforms "in conjunction with the rural exemptions from interconnection requirements and universal service reforms" and to evaluate the "impact on consumers and the national universal service goals...when developing and applying such reforms." The Ohio PUC counsels (p.13) applying only some beneficial policies to rate of return LECs --bulk billing of CCL costs to IXCs and not raising the SLC on multi-line business and non-primary residential lines.

But even comments like those just described that understand the need for caution in formulating rural access charge policy have not solved the dilemma (see RTC at 2-3) of leaving in place access charges that invite uneconomic bypass and creamskimming while the unusual needs of rural markets are evaluated and accommodated. The Act is replete with provisions that demonstrate Congress's special concern with the effects of the new law on rural LEC service areas. TDS Telecom strongly urges the Commission to provide rural telephone companies with access reform options and adequate flexibility to respond to the competitive marketplace immediately, even while the Commission considers further how best to foster rural telecommunications development in the new environment.

Equally disturbing is the virtual certainty that the Commission intends to embrace forward-looking, hypothetical network proxy costs for all ILECs, not just proxy costs for the price cap LECs directly in question in this phase. The history of the interconnection and universal service implementation proceedings leaves little doubt that even a bifurcated "approach" is unlikely to herald a truly unbiased consideration of the proxy model issue when the Commission officially turns to rate of return LECs. Indeed, the Commission's staff has identified the ability of a proxy to be used for multiple purposes -- such as pricing interconnection and unbundled elements and measuring high costs meriting universal service support -- as a criterion for adopting a proxy model.[3] Instead of ignoring rate of return LEC impacts and the effects of its other proceedings, the Commission needs to create a procedural structure that will facilitate coordination of its universal service, separations, access charge and interconnection policies. As TDS Telecom showed in its opening comments (p. 6), this step is

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[3] J. Atkinson, et al., The Use of Computer Models for Estimating Forward-Looking Economic Costs: A Staff Analysis, p. 5, ¶11 (January 9, 1997) (Staff Analysis).

essential to satisfying the Act's universal service and rural-specific policy requirements.

Coordination of separations, universal service and access results is also a logical and legal prerequisite to evaluating whether to "set off" universal service support against various interstate access revenues, as some comments urge (e.g., ACTA at 22). The 1996 Act called for revamping universal service mechanisms to make "implicit" support "explicit." Section 254(e) then requires the resulting support to be "sufficient." The 1996 Act also adds to the requirements for universal service such costs as the discounts for schools, libraries and rural health care providers. Accordingly, the Commission must have before it the whole package of universal service, access, separations and interconnection rules and their effects before it can determine whether universal service revenues are "new" or what they replace. Any set-off for interstate access revenues to prevent double payment must match the support from the new mechanism against what it is designed to replace.[4]

B. The Commission Cannot Rewrite the Act to Apply Substantially Expanded Interconnection and Access Requirements, Beyond What the Act Applies to Independent LECs, Directly or as the Prerequisite for Essential Freedom to Compete

An essentially false issue in the NPRM is whether the Commission should prescribe forward looking cost proxy or use a "marketplace" strategy to compel ILECs more indirectly to reduce their prices to forward looking costs. TDS Telecom (pp. 29-31) explained that the NPRM's marketplace proposal amounts to a prescription anyway: As a practical matter, it is no different from a direct mandate to refuse even the first regulatory flexibility for "potential"

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[4]Whatever may be the facts with respect to price cap LECs, rate of return LECs in the NECA pools have charged interstate rates solely in accordance with the Commission's rules and under detailed scrutiny. See, p.[15], infra.

competition until the ILEC complies in full with the Commission's currently-stayed interconnection requirements and the separate checklist of competitive prerequisites enacted by section 271. For one thing, section 271 provides requirements solely for use in evaluating RBOC "in-region" entry into the interexchange marketplace.

TDS Telecom showed in its opening comments (pp. 29-31) that the Commission should not impose more regulation to implement the Act's competitive, marketplace-based, "de-regulatory" approach. At the very least, any additional prescription should meet the forbearance test of section 10, which requires elimination of even existing regulations that are not found necessary under the standards of that section. In contrast, NCTA (pp. 15-19) criticizes the first phase of the Commission's market-based access reform proposal because it does not require more than the Act already requires. Professor Alfred F. Kahn has warned against the regulatory fallacy that marketplace results can be imposed by regulatory force on the theory that: " 'We will determine not what your costs are but what they ought to be.' "[5] Dr. Kahn has further explained that:

> In unregulated markets, prices tend to be set on the basis of the actual costs of incumbent firms. That gives challengers the proper target at which to shoot, the proper standard to meet or beat and the proper reward if they succeed. If they can achieve costs lower than that, they will enter and in the process (which the FCC's pricing rules would short circuit) beat prices down to efficient levels. Ultimately, only the market, and not regulators, can determine the efficient result.

In contrast, the comments of other existing and potential IXCs and CLECs bristle with assertions that a market-based approach does not go far enough to compel "efficient" ILEC

[5] Letter from Alfred F. Kahn to Reed Hundt, p. 2, dated January 14, 1997

pricing or ensure a high level of "actual" competition. Some parties (e.g., ACC at 2-5, TRA at 28-29) seek to discredit competition via resale and unbundled elements and demand proof of facilities-based competition before the Commission provides ILECs any flexibility to respond to competition. Others demand additional prerequisites, such as greater access to operating systems (e.g., Comptel at 10), completion of separations reform (TCG at 10-12, 47-48) and even detailed requirements for how access must be furnished that exceed the interconnection and unbundled element requirements (id. at 4-8).

Especially troubling is the theory (Worldcom at 72-92, ICG at 9-10) that the Commission can wield basic flexibility to respond to competition as a prescriptive weapon to compel non-BOCs to implement the section 271 checklist, as well as to force rural telephone companies to comply with section 251(c) without regard to their exemption and suspension or waiver status under Section 251(f) or the state's rural entry policy under Section 253(f).

Congress adopted the negotiation-based framework for sections 251 and 252 and the separate RBOC competitive checklist for particular purposes. If it had considered full compliance by all companies with these provisions to be necessary to its plan for transitioning to competition, Congress would have applied the requirements across-the-board, without the section 251 relief provision and without specifying separate prerequisites for RBOC in-region interexchange entry. All parties have agreed the access charge system must be reformed to be consistent with the new national "competitive and de-regulatory" policy blueprint. Proposals to prescribe extraneous and tangential requirements for ILECs or to precondition relief from antiquated access provisions on clearing regulatory hurdles designed for different types of ILECs all constitute improper attempts to rewrite the law that Congress adopted. The parties that seek to compete with ILECs or to use ILEC facilities to provide their services are trying to secure a competitive advantage by heaping more requirements on LECs than Congress decided were necessary to achieve its purposes. The Commission should not substitute a version of government-contrived competition and carefully manipulated unequal regulation for the far-more-marketplace-reliant approach ordained by the 1996 Act.

III. PROPOSALS TO USE FORWARD LOOKING COSTS OF IMAGINARY OPTIMAL NETWORKS HAVE NOT BEEN VALIDATED OR JUSTIFIED AS LAWFUL FOR RATE OF RETURN LECs HERE OR IN OTHER PROCEEDINGS

A. The Commission Should Not Prescribe or Otherwise Impose Hypothetical Proxy-Based Costs As a Precondition for Access Relief, Especially for Rate of Return LECs

The NPRM and many commentors seek to impose the Commission's hypothetical cost proxy cost theories and thereby to effect a new regulatory definition of access costs as a prerequisite for granting ILECs any pricing flexibility in the new competitive marketplace. Within the broad consensus that access charges need reform, underlying goals differ depending on the interests of the commenting parties. Some parties stand to gain from a regulatory fiat imposing theoretical "economic costs" solely on the incumbent LECs, from whom they may choose to purchase all or part of their capability to connect with their customers. Endorsing the proposal to prescribe access rates based upon TSLRIC or TELRIC cost models would reduce the "cost" of reaching their customers and eliminate ILEC revenues that now reimburse real costs. Moreover, lower access charges do not automatically equate to increased competition or consumer welfare, as many parties appear to assume.[6]

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[6]The AARP (pp. 17-18) and the RTC (pp. 26-27) believe the FCC must require interexchange carriers to pass through access charge reductions in their end user rates.

Many advocates of a forward-looking cost mandate (e.g., MCI at 7-14, 28-32) rehash arguments made in the interconnection and universal service proceedings and elsewhere. Others seem to regard it as beyond dispute that regulators must decree that such regulator-ordained costs are all that ILECs should expect to recover. AT&T even urges the Commission to prescribe forward looking cost-based recovery, following in the footsteps of its interconnection rules, on the theory that such regulatory intervention is a "marketplace" solution. In AT&T's oddly twisted view (p.4), the Commission can best reform regulation to "produce what 'a competitive market for access services would produce,'" by "pushing access price caps to more competitive levels" (p. 6). Indeed, AT&T pretends (p. 7) that adopting a still-more-intrusive version of the Commission's "prescriptive" alternative

> is 'market-based' because it represents the only mechanism by which to create genuine competition and insure competitive market-based prices.

This semantic sleight-of-hand serves only to underscore TDS's criticism (Comments at 29-32) of both alternatives in the NPRM. Both would heap more regulation on incumbent LECs in the guise of implementing the 1996 Act's "pro-competitive and de-regulatory" purpose. The Commission should heed the deregulatory policies of the Act and refrain from mistaking increased heavy-handed price regulation for "genuine competition" and confusing regulator-orchestrated ILEC cost and rate calculations for "market-based prices." The suitability of a hypothetical cost model to predict even the "forward looking costs" economists expect from competitive markets has been persuasively challenged by Dr. Kahn (Kahn Letter at 1-2). Professor Kahn explains (pp. 1-2) that the economic principle that forward looking costs give accurate market signals requires signals based on "the costs that society will actually incur."

Since, in his expert view, TELRIC is not "the level to which competition would drive prices if it were effective" (ibid.), AT&T's and MCI's insistence that it should be perpetuated in regulations is simply wrong. Indeed, the transition to "competition" in the interexchange market took place without a prescription of TSLRIC or TELRIC or any other hypothetical forward-looking cost model. As the supporters and originators of the TELRIC/TSLRIC approach, AT&T and MCI should come forward with (or be ordered to provide to the Commission) TELRIC/TSLRIC studies for their own services. The Commission should also require them to demonstrate that their rates -- driven by what the Commission has held to be an effectively competitive market -- are no higher than the hypothetical forward-looking proxy model costs they want the Commission to ordain for ILECs.

The issue of prescribing forward looking costs is a crucial one for rural ILECs. The comments confirm (e.g., RUS at 2, RTC at 16, GVNW at 3, n. 2) the disproportionate reliance on interstate access revenues that characterizes rural LECs, as a deliberate consequence of past regulatory policy decision. Ignoring the impact on non-price cap LECs of a new cost definition and measurement regime -- one that is virtually certain to be extended to rate of return LECs -- would severely prejudice those LECS and their customers. In fact, the difference between access charges based on actual costs and "forward-looking costs" forms the most controversial foundation for the sweeping pronouncements that access charges are "excessive" (e.g., AT&T at 10-17) or that access charges include as much as $6.6 billion in excess of properly defined access costs and another $5 billion in excess of legitimate universal service costs (MCI at 7-8). Even more consequentially, the new government-imposed cost paradigm would be unlike more modest access aimed at reallocating of costs to be recovered (a) in different rate elements, (b) by more "explicit" support mechanisms, (c) from different customer classes or (d) under different jurisdictional authority via separations reform. Most advocates of forward-looking hypothetical costs (e.g., TRA at 22-23, 29-33) seek, in effect, to redefine the difference between actual historic and theoretical economic costs out of existence. In MCI's ruthless vision (pp.15-18), for example, the Commission should not only use the controversial and significantly cost-reducing Hatfield proxy model that MCI favors, but should also prescribe that "cost" definition immediately to reduce rates to the new government-sanctioned "efficient" level. MCI should be held to that same standard itself before the Commission accepts its contention about market-driven "efficient" or "economic" costs.

The question of whether it will be possible to fashion and validate a proxy model for a hypothetical optimally efficient network that can pass statutory and constitutional muster for any ILEC remains unresolved. Bell Atlantic (pp. 17-24), the Western Alliance (pp. 13-18) and others also challenge the Commission's authority under the Communications Act and the United States Constitution to impose this theoretical pricing scheme on ILECs. Bell Atlantic explains (pp. 17-18) why it would be unlawful to prescribe rates based on "TELRIC or TSLRIC forward-looking costs," "someone else's costs" or a "hypothetical network," instead of a "company's actual costs." The RTC has shown in its universal service filings that to design and validate a proxy model that can reasonably be used for rural telephone companies presents a particularly serious challenge. The Commission's own staff has identified numerous problems with the proposals for proxies that have been advanced so far and has outlined substantial additional work that must be done before any proxy can be adopted for any ILEC.[7]

Moreover, until the prescription by regulators of forward-looking costs has been judicially tested, the Commission cannot blithely brand failure to set rates to meet that standard as an unjust, unreasonably discriminatory or otherwise unlawful charge or practice. The Commission must, however, make such a finding under section 205 of the Communications Act of 1935 before it has authority to substitute government rate-setting by prescription for the carrier-initiated interstate ratemaking framework in the statute.[8]

Presuming, as does AT&T (p.10), that "exchange access prices far exceed efficient levels" is manifestly inappropriate for rate of return LECs in the National Exchange Carrier Association (NECA) pools. Their costs are reported and checked carefully by NECA and are also subject to state regulatory oversight. Their access tariffs are subject to challenge and review at the Commission.[9] In fact, their entire rate structure and levels are controlled by detailed Commission regulations. It would be absurd to presume that these government-prescribed rates violate the Communications Act. While rate of return LECs, like larger ILECs, need pricing flexibility to respond to competition, regulatory prescription of an undeveloped proxy as the basis for these pool members' rates is not a lawful precondition for market responsive pricing.

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[7] Staff Analysis, passim.

[8] 47 U.S.C. §205 (gives the Commission prescription authority only after it concludes that existing rates violate the Communications Act).

[9] TDS Telecom agrees with the RTC (see, pp. 14-15) that it is irrational to initiate an inquiry at this late date into whether historical costs underlying existing access charges, based on Commission rules and subjected routinely to the Commission's tariff review process, were "prudently incurred," as AT&T demands (p. 33).

B. The Commission Must Provide for Recovery of Historic Costs by Price Cap and Rate of Return LECs

1. The Commission Must Develop a Mechanism to Reimburse Rate of Return and Price Cap ILECs for Costs Incurred As Carrier of Last Resort

It is clear that the Commission and others (e.g., AARP at 3-10) are committed to reducing access charges by any means they can devise. As noted, AT&T and MCI have computed how much of a decrease they demand. The record contains conflicting views and legal theories about whether, to what extent, under what rationale and how ILECs should be allowed or enabled to recover their actual historic or embedded costs. The IXCs and CLECs scoff at LEC appeals to the Constitution and fairness in adhering to legitimate carrier expectations under traditional regulatory policies. TRA (pp.29-33), for example, contends that most of the disputed embedded costs result from inefficiency and excessive costs that should not be recovered at all. Its "facts" are not demonstrated. MCI (pp.71-75) denies that ILECs can justify recovering any costs in excess of "economic costs' without proving both under-depreciation and lack of adequate revenue sources. The WUTC observes (p. 11), no doubt correctly, that the legal and constitutional questions will ultimately be decided by the courts. However, the Commission should not abandon its investigation of how to provide for equitable and lawful recovery of stranded investment resulting from fundamental changes in long-established regulatory policy for public utilities.

AT&T flatly denies (pp. 21-22) the existence of any regulatory compact. The Fla. PSC (pp. 9-10), Time Warner (p. 48) and Ad Hoc (pp. 63-66), however, seem to link denial of embedded cost recovery to the inconsistency of embedded cost recovery with the nature of price cap regulation.

TDS Telecom supports the valid legal positions of the large LECs delineating the limits on governmental "takings." It is worth adding, however, that the contentions about whether price cap regulation carries with it a different expectation as to embedded cost recovery -- perhaps on the theory that price caps represents a new regulatory compact -- are wholly inapplicable to rate of return LECs.[10] Rate of return LECs cannot even be argued to have agreed to or participated in a new regulatory compact. In fact, they have not been offered any alternative regulatory scheme that could reasonably be applied in light of their varied and volatile market facts. They have invested in markets where regulatory intervention was the necessary basis for achieving a reasonable return, and they categorically deny claims and innuendos of inefficiency or excessive costs.[11] Indeed, even now, AT&T (p.31) attacks "unnecessary retirement of analog switches and replacement by digital switches..." as a purported example of ILEC costs that do not warrant compensation. However, the information infrastructure the 1996 Act seeks to ensure for all areas requires digital switching capability.[12] Rate of return and price cap LECs that have invested in modern technology so that their customers will not be left on the wrong side of the information chasm should not be denied recovery through the federal

[10]To the extent that price cap regulation represents a new regulatory compact, demands for "re-initialization" under drastically changed regulatory assumptions would seem to have abandoned the new price caps regulatory compact, too.

[11]It would be unconscionable for the Commission to refuse recovery of embedded costs by rate of return LECs, since the Commission must necessarily determine that its own prescribed rates -- which controlled ILEC's cost recovery expectations -- are unlawful.

[12]A hypothetical optimally efficient universal service network must surely be capable of the digital switching AT&T seems to object to installing.

government's decision not to honor the public utility expectations in force when they undertook their capital intensive investments.

The notion that other revenues will compensate ILECs (e.g., AT&T at 36-39, MCI at 73) is speculative, at best. Indeed, turning to other services for revenues amounts to imposing an obligation to cross-subsidize access services provided to IXCs out of revenues from other, often competitive services. Such a regulatory burden on incumbents is obviously not competitively neutral and extends government regulation into the separate, unregulated markets for the services that AT&T claims now must generate revenues to cover stranded costs. In any event, the revenues from other services differ widely among companies. Rate of return LECs do not enjoy the same level of demand for the same variety of services as dense-market price cap LEC markets.

Bell Atlantic (p. 18) and the RTC (pp. 20-21) provide compelling authority demonstrating that the FERC took its obligation not to saddle incumbents with stranded investment seriously when changing the regulatory ground rules for the companies it regulates. This Commission should similarly rebuff the efforts of IXCs and CLECs to penalize ILECs for their investments under the public utility paradigm in a way that the FERC obviously found unlawful. The Commission should, therefore, design and adopt an effective recovery program for all price cap and rate of return ILECs' actual historical costs.

2. The Commission Can and Should Reallocate Costs in the TIC To Other Elements or Section 410(c) Joint Board, But May Not Decree a "Regulatory Write-Off" for Remaining Carrier-Incurred Costs

The controversy over how to deal with the TIC involves the same kind of concerns about what are, in effect, regulatory write offs of compensation for actually-incurred ILEC costs.

Worldcom (pp.27-28) and AT&T (pp. 58-59) advocate immediate or expedited elimination of the TIC. Other comments (e.g., NECA at 4-10, USTA at 63-66) demonstrate that most of the costs in the TIC can be reallocated to other access cost elements or given more appropriate jurisdictional separations treatment. Many comments (e.g., Ad Hoc at 27-28) support the concept of reallocating costs that can be shown to "fit" elsewhere. USTA and NECA also explain that the costs that remain are, nevertheless, real costs, which cannot just be phased out or eliminated. Thus, Worldcom is right (p.91) that historical ILEC costs should be treated the same way as whatever TIC costs are not reallocated; but Worldcom is dead wrong in arguing that both can lawfully be written off by a federal agency.

The Commission should make the cost reallocations and work with a joint board to achieve appropriate separations treatment for the TIC, as explained by NECA (pp. 4-10). Any remaining costs should continue to be recovered by the TIC.

IV. THE COMMISSION SHOULD TAILOR RATE STRUCTURE REVISIONS TO ADVANCE THE INTERESTS OF SUBSCRIBERS, UNIVERSAL SERVICE AND COMPETITION, NOT JUST OTHER CARRIERS

A. Interexchange Carriers Should Continue to Bear a Fair Share of the Costs for Connectivity to Their Customers

There is broad support (e.g., Time Warner at 3-4, MCI at 75-76) for the need to replace the existing traffic sensitive recovery of Carrier Common Line charges. Many comments (e.g., Worldcom at 30-32, AT&T at 51-55) demand the elimination of the CCL access charge element and recovery of the costs through uncapped SLCs. Others favor a flat-rate charge to IXCs, which some say should be passed through as a flat rate charge to end users (Comptel at 29).

The AARP (pp. 16-17) explains why IXCs must continue to pay CCL charges, since the loop is a"common cost subject to section 254(k) of the 1996 Act." Moreover, there is strong, well-reasoned opposition to recovering all or most of the current CCL allocation through direct charges to end users. The WUTC (p.1) correctly calls attention to the close relationship between this proceeding and the Act's universal service mandate, stressing that access charge reform must "advance [ ] the interests of consumers as well as telecommunications companies," especially with respect to "any cost recovery mechanism for subscriber loop costs." Thus, while the WUTC does not object to a flat-rated recovery for CCL costs from interexchange carriers (pp. 2-3), it is in accord with TDS Telecom in warning against "creat[ing] a SLC by another name, by charging CCL costs as a flat rate to IXCs who in turn charge it to subscribers." Such action, suggests the WUTC (<u>ibid.</u>), would "circumvent the work of the Universal Service Joint Board on SLC charges." The Fla. PSC (p. 2) also opposes a flat charge to end users for CCL costs, advocating either bulk billing or capacity charges for IXCs, and NARUC (p. 12) echoes its member commissions' cautions against any increase in the SLC or the SLC cap. The notion of loading more CCL costs on end users, directly or by uncapping the SLC, already faces political opposition because Congress did not expect consumer rates to rise as a result of the 1996 Act. A bipartisan consensus against increasing the SLC emerged in a recent panel of key House and Senate staff members.[13] The Commission should fashion a solution that does not shift IXCs' cost responsibilities to local exchange subscribers.[14]

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[13] Communications Daily, "Congressional Aides Warn Against Raising SLC," February 6, 1997, p. 2.

[14]In contrast, TDS Telecom supports funding universal service through a uniform nationwide surcharge on end user bills. That proposal is necessary to meet the Act's "explicit" support requirement and would recover a competitively neutral contribution from all interstate

B. The SLC Should Remain "Reasonably Comparable" in Rural and Urban Areas for All Types of Connections

Significant opposition also extends to proposals (e.g., Sprint at 17, Time Warner at 8-9) to deaverage the SLC and remove the cap on SLCs for all but a first primary residence connection and a single-line business connection. Sprint even tries to argue that SLC deaveraging is required to avoid an unlawful "implicit" subsidy. The WUTC agrees that section 254 requires universal service support to be "explicit," but wisely concludes that the section does not "in any way require[s] or impl[y] that the SLC charge should be deaveraged," since the SLC is not "any kind of universal service support or subsidy, but rather a mechanism to recover a portion of appropriately allocated interstate loop costs" (p.5).[15]

Some comments (e.g., TCG at 24-25, ACTA at 7) support increasing SLCs to recover full costs for the additional residential and business lines the Joint Board recommended disqualifying for high cost support . Others (e.g., USTA at 55-57, RTC at 7-9) oppose that proposal. CIX, for example, warns (pp.13-14) that burdening second residential and all of a multi-line business's lines will burden services the Act seeks to encourage, such as the Internet. The South Dakota PSC opposes (p.2) SLC-like charges to end users through "any options that would effectively impose additional flat monthly charges directly on the end user, even for second residential

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service providers. AT&T's bid to improve its competitive position and profits by dumping its legitimate cost of doing business into a deaveraged extraction from local exchange subscribers is materially different in purpose and effect.

[15] Although there is some support for the notion of charging SLCs for each derived ISDN channel (TRA at 35), the weight of the reasoning justifies charging on a facility basis (Sprint at 18) to avoid discouraging ISDN and other such efficient uses of the network (Comptel at 29-30, ACTA at 7).

lines." Other comments (e.g., Sprint at 17) substantiate the administrative burdens of such a requirement. In any event, proponents of penalizing second residence and multiple business connections by selective SLC increases neglect even to explain how the Commission can lawfully do so. The Act does not except any kind of rates, services or customers from the section 254(b) (3) requirement for "reasonably comparable" rural and urban rates and services.

Given the wide variety of commenting parties that seriously question SLC increases, the language of section 254(b)(3), the Joint Board SLC recommendations and unambiguous feedback on behalf of members of Congress, the Commission should reject proposals to deaverage, increase, or create new SLC or SLC-like charges to be extracted from end users. Instead, the Commission should provide for bulk billing on a non-traffic sensitive basis to IXCs to recover a fair share of loop costs.[16]

V. CONCLUSION

The record establishes the need for careful review of proposed access charge reforms on rate of return LECs and timely options for competitive responses -- even before the necessary separate access proceeding for rate of return LECs. Forward looking proxy costs and actual, historical cost recovery are both issues that can have differing and disproportionately severe impacts on smaller ILECs' markets and do not even accurately reflect the level of prices in the

[16] Commentors take a variety of positions on the NPRM's other proposals for structural changes to specific access charges and elements. TDS Telecom again urges the Commission to consider the cost of any proposed changes in light of the benefits sought by the proposal. That evaluation should carefully take into account the different circumstances of rate or return and price cap companies. Giving rate of return LECs the option of implementing changes adopted for price cap LECs would properly let each LEC's management apply the cost benefit calculus based on its market facts and shape its response to the marketplace.

presence of effective competition. More market reliance, not more regulation, should guide any access reform plan. SLC deaveraging or uncapping, disqualifying some connections from SLC caps, adopting other SLC-like charges on end users and relieving IXCs of their fair share of common line costs are not what the Act requires or Congress intends. Access reforms must be harmonized with universal service, interconnection and separations proposals and the end user benefits of proposals must outweigh the costs.

The Commission has much to accomplish in a short time. TDS Telecom stands ready to assist in its consideration of how its proposed access reforms will affect rate of return ILECs.

Respectfully submitted,

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